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U.S. COURTS

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REC'D _____ FILED _____
CAMERON S. BURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON)

Plaintiff,)

v.)

CONTINENTAL CASUALTY COMPANY)
an Illinois corporation; CNA GROUP)
LIFE ASSURANCE COMPANY, a)
wholly owned subsidiary of Continental)
Casualty Company, RURAL)
TELEPHONE COMPANY, and Idaho)
corporation)

Defendants.)

Case No.: CV02-0507-S-LMB

**PLAINTIFF'S MEMORANDUM
REGARDING DEFENDANT CNA'S
MOTION TO DISMISS AND
PLAINTIFF'S MOTION TO AMEND**

COMES NOW, Plaintiff, by and through his attorneys of record, Comstock &
Bush, and hereby submits Plaintiff's Memorandum Regarding Defendant CNA's Motion
to Dismiss and Plaintiff's Motion to Amend as follows:

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PLAINTIFF'S MEMORANDUM REGARDING DEFENDANT CNA'S MOTION TO
DISMISS AND PLAINTIFF'S MOTION TO AMEND- 1

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INTRODUCTION

Plaintiff complains that Defendants wrongfully denied his long-term disability benefits afforded pursuant to his employer's group long-term disability insurance plan. Defendant Rural Telephone Company answered the Complaint. Defendant CNA seeks to dismiss Plaintiff's Complaint arguing that Plaintiff's Complaint, in part, is deficient because it refers to "breach of contract" and "breach of fiduciary duty", common law claims preempted by ERISA. During the initial scheduling conference, Plaintiff agreed that a bench trial was indicated as his claim was a claim under ERISA. In addition, Plaintiff represented that he would seek to amend the Complaint to alleviate Defendant CNA's concerns as to the form of Plaintiff's Complaint even though Plaintiff felt the Complaint could stand as stating a cause of action under ERISA. Plaintiff's proposed Amended Complaint was circulated to the Defendants with a proposed Stipulation to Amend Complaint. Defendant Rural Telephone Company executed the Stipulation to Amend Complaint, but Defendant CNA refused. See, attached original Stipulation to Amend Complaint as Exhibit 1. Thus, both Defendant CNA's Motion to Dismiss and Plaintiff's Motion to Amend are before the Court and scheduled to be argued on July 21, 2003. As will be argued, Plaintiff's initial and amended Complaint state a recognized cause of action for long-term disability benefits pursuant to ERISA. Defendant CNA's Motion to Dismiss should be denied and Plaintiff's Motion to Amend should be granted.

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ARGUMENT

A. All That Is Required Is a Short And Plain Statement Showing That the Pleader Is Entitled To Relief.

The federal rules regarding pleadings adopt in essence, a requirement to fairly place the opposing party on notice of the claim. Specifically, Rule 8(a)

F.R.C.P. sets forth the general rules of pleading as follows:

(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

Defendant CNA's Motion should be denied because Plaintiff's Complaint states a claim upon which relief can be granted. Jurisdiction for Plaintiff's ERISA claim was stated at paragraph 5 of the Complaint as follows:

Jurisdiction in this court is vested pursuant to 29 U.S.C. §1132(e)(1).

In paragraphs 7 through 17 of Plaintiff's Complaint, Plaintiff specifically outlined the factual history regarding his claim for benefits under his policy and the Defendants' denial of that claim for benefits. As to Defendants Continental and CNA, Plaintiff alleged they "owed Mr. Dennison a contractual duty to ensure that his claim for long-term disability benefits was evaluated and considered in a fair and impartial manner." See, paragraph 19 Plaintiff's Complaint. In addition,

Plaintiff alleged a breach of this contractual duty by Defendants "arbitrarily and capriciously denying Mr. Dennison long-term disability benefits." See, paragraph 20, Plaintiff's Complaint.

Plaintiff further set forth his claim by alleging Defendant Rural Telephone Company "owed Plaintiff a fiduciary duty to ensure that his claim for long-term disability benefits was presented to Defendant CNA in a fair and impartial manner." See, paragraph 23, Plaintiff's Complaint. A breach of this duty is clearly stated in the Complaint with the allegation that Rural Telephone Company "breached this duty by wrongfully informing CNA that Mr. Dennison could work at Rural Telephone Company and that Rural Telephone Company would accommodate his medical condition allowing him to perform his job when it had no intention of doing so." See, paragraph 24, Plaintiff's Complaint.

Plaintiff's Complaint goes on to allege that Defendant CNA "owed Plaintiff a fiduciary duty to ensure that his claim for long-term disability benefits was evaluated and considered in a fair and impartial manner." See, paragraph 27, Plaintiff's Complaint. The Complaint further alleges that "CNA breached this duty by existence of its inherent conflict of interest, by ignoring the evidence presented by Plaintiff's own physician and by failing to investigate the validity of the information it was provided by Defendant Rural Telephone Company to the effect that Mr. Dennison could work at Rural Telephone Company and that Rural Telephone Company would accommodate his medical condition allowing him to

perform his job, when Rural Telephone Company had no intention of doing so.” See, paragraph 28, Plaintiff’s Complaint.

Comparing the allegations of the Complaint to the requirements of notice pleading defined in Rule 8(a), F.R.C.P., it is abundantly clear that Plaintiff afforded Defendant CNA a short and plain statement of the grounds upon which the Court’s jurisdiction depended and a short and plain statement of the claim establishing Mr. Dennison’s entitlement to relief. Essentially, Defendant CNA takes exception to the form rather than the substance of the Complaint because of the headings which refer to “breach of contract” and “breach of fiduciary duty”. Their exception does not render the Complaint defective as the Complaint adequately meets the requirements of the Federal Rules of Civil Procedure.

B. Plaintiff’s Motion to Amend Should Be Granted.

Normally, a party may amend the parties pleading once as a matter of course at any time before responsive pleading is served. Otherwise, a party may amend their pleadings only by leave of court or by written consent of the adverse party. Leave shall be freely given when justice so requires. Rule 15, F.R.C.P.

Consistent with the representations made at the time of the scheduling conference, Plaintiff circulated an Amended Complaint clarifying in part, Plaintiff’s claim for benefits pursuant to ERISA. Defendant Rural Telephone Company executed the Stipulation to Amend, but Defendant CNA chose not to sign the Stipulation. Given that the Complaint was amended to, in part, relieve Defendant CNA’s criticism as to form of the initial Complaint, it came as a surprise when

CNA decided it would not stipulate to leave to amend. Having decided it would not execute the Stipulation to Amend, it became incumbent upon Plaintiff to file a Motion for Leave to Amend. Plaintiff has adequately stated a claim for relief under ERISA alleging Defendants' wrongful denial of benefits. The denial breached duties owed to the Plaintiff. Defendants' opposition to the Amended Complaint, while not stated of record, at present, should be overruled. Leave to amend the Complaint is warranted so that the parties can move forward in preparation for a court trial.

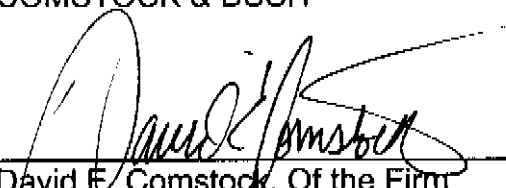
CONCLUSION

Defendant CNA's Motion to Dismiss should be denied because the initial Complaint fairly places CNA on notice of Mr. Dennison's claim. Plaintiff's Motion to Amend the Complaint should be granted for the reason that the interest of justice would so require.

RESPECTFULLY SUBMITTED This 4 day of June, 2003.

COMSTOCK & BUSH

By:



David E. Comstock, Of the Firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 4 day of June, 2003, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Donald F. Carey
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Idaho Falls ID 83402-2948

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☐ Hand Delivery
☒ U.S. Mail

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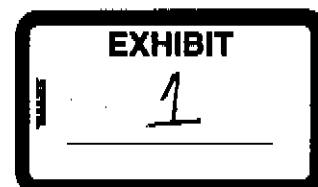
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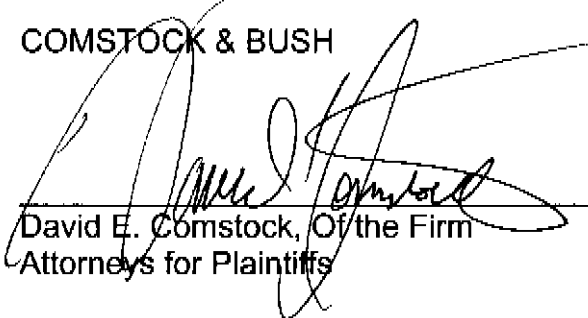
**STIPULATION TO AMEND
COMPLAINT**

IT IS STIPULATED by and between the parties hereto, by and through their attorneys of record, that the Complaint filed in this matter be amended to state clearly that this claim is brought seeking relief allowed pursuant to ERISA.



DATED THIS _____ day of April, 2003.

COMSTOCK & BUSH



David E. Comstock, Of the Firm
Attorneys for Plaintiffs

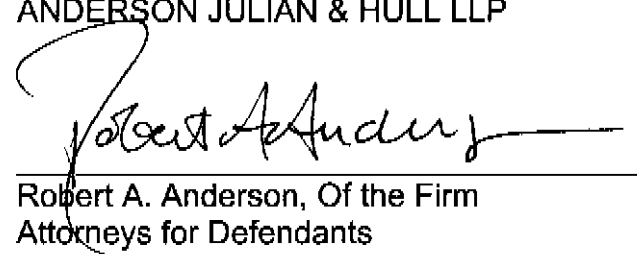
DATED THIS _____ day of April, 2003.

QUANE SMITH LLP

Donald Carey, Of the Firm
Attorneys for Defendants

DATED THIS _____ day of April, 2003.

ANDERSON JULIAN & HULL LLP



Robert A. Anderson, Of the Firm
Attorneys for Defendants